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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

SHEIBER AVILA,

Defendant and Appellant.

F063417

(Super. Ct. No. F10905300)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. James M. Petrucelli, Judge.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Detjen, J., and Franson, J.

Appellant, Sheiber Avila, pled guilty to sexual penetration of a child 10 years of age or younger (Pen. Code, § 288.7, subd. (b)), and was sentenced to an indeterminate term of 15 years to life. Following independent review of the record, pursuant to *People v. Wende* (1979) 29 Cal.App.3d 436 (*Wende*), we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

Avila resided with G.J., G.J.'s boyfriend, and G.J.'s children. On October 17, 2010, at approximately 1:30 p.m., G.J. left her children with Avila while she went to the store. When she returned, she saw Avila coming out of the back bedroom. When Avila saw her, he hurried back to the bedroom and G.J. followed. In the bedroom, G.J. found her six-year-old daughter with a strange look on her face, sitting on a sofa cushion with a towel wrapped around her. G.J. called the victim out of the room and eventually she told G.J. that Avila had touched her inappropriately. G.J. took her daughter into the bathroom and found the trash can filled with bloody toilet paper. G.J. also found blood on her daughter's underwear. After Avila denied molesting her daughter, G.J. called the police.

During a SART examination, the victim stated that once her mother left for the store, Avila went into the back bedroom and asked her to go out to the living room to watch television. When she complied, Avila placed the victim on her stomach and removed her shorts. He then got on top of her, put his “pee pee” in her privates, and rocked back and forth for a few minutes. When he got off of her, the victim went into the bathroom and noticed she was bleeding. She then wiped herself with toilet paper and placed the bloody paper in the trash can. Afterwards, she returned to the back bedroom, followed by Avila.

During a postarrest interview, Avila initially denied touching the victim. Eventually, he stated that he placed his fingertip in the victim's vagina for a few seconds because she was “hitting on” him. Later, he admitted using force and putting his penis

in the victim's vagina, but he denied sodomizing her. However, the nurse who examined the victim found a laceration on her anus.

On March 29, 2011, Avila waived a preliminary hearing.

On April 1, 2011, the district attorney filed an information charging Avila with two counts of sexual intercourse or sodomy with a child 10 years of age or younger (counts 1 & 2/Pen. Code, § 288.7, subd. (a)) and sexual penetration of a child 10 years of age or younger (count 3/Pen. Code, § 288.7, subd. (b)).

On August 25, 2011, the court denied Avila's *Marsden*<sup>1</sup> motion. Avila then pled guilty to penetration of a child 10 years of age or younger (count 3) in exchange for the dismissal of counts 1 and 2.

On September 21, 2011, the court sentenced Avila to an indeterminate term of 15 years to life.

Avila's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*Wende, supra*, 25 Cal.3d 436.) Avila has not responded to this court's invitation to submit additional briefing.

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

The judgment is affirmed.

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118.